

REFUND CLAIMS AND RESPONSES

Requirements and recommendations for
Businesses & Collectors from preparation of
claim to redetermination

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Timely Filed Refund Claim

- Claims by a taxpayer for a refund of an “overpayment” are subject to the same general 3-year prescriptive rule as claims by the collector for additional taxes owed.
- Suspension or interruption of prescription by the Collector (La. R.S. 47:337.67) also extends the period for a taxpayer to request a refund, subject to limitations. See Act 210 of the 2015 Reg. Session. See *Cajun Industries v. Department of Revenue*, BTA.
- Suspension or interruption of prescription by a taxpayer submitting a refund claim also extends the same period for the Collector to determine credits or offsets *up to the amount of the refund*. See Act 640 of the 2014 Reg. Session.
- A refund claim must be submitted, “...in a properly addressed envelope with sufficient postage” to be considered filed on the date postmarked.

Contents of a Proper Refund Claim

- The term “refund claim” is not defined in the law.
- In *Larrieu v. Wal-Mart*, the First Circuit held that a demand letter was insufficient to exhaust administrative remedies.
- In *TIN, Inc. v. Washington Parish Sheriff*, the Louisiana Supreme Court found the taxpayer’s submission to constitute a valid refund claim. Where is the line?
- Ideally, a valid refund claim prepared by a taxpayer should contain enough support to allow the Collector to issue a refund under one of the enumerated provisions in La. R.S. 47:337.77.
- The Collector should make written requests for the taxpayer to supplement claims with documents/information as relevant based on the nature of the claim.
- The taxpayer should offer to present additional records upon request and make certain knowledgeable persona employed by the taxpayer available.

The Collector's Initial Response

- A Collector may – but should never – ignore a taxpayer's refund claim. See La. R.S. 47:337.81A(2)
 - If the Collector fails to respond, the taxpayer can file suit from one year and one day after the refund claim was submitted, but no later than, "...after the expiration of one hundred eighty days from the end of the year in which the collector failed to act."
- Before rendering a "refund claim determination," the Collector should – but does not have to – make a written request for the taxpayer to provide any supplemental documents, data, statements, etc. to support their refund claim.
- Once the Collector has as many documents and as much information as necessary, the Collector should render its "refund claim determination."

The Ideal Refund Claim Determination Letter

1. On the Collector's or its' attorney's letterhead;
2. Must be sent via USPS certified mail (and regular mail, optional);
 1. CC all CPAs, attorneys or representatives of the taxpayer;
3. State "Refund Claim Determination Letter" conspicuously on the document;
4. State each and every item provided in connection with consideration of the refund claim;
5. Have a section making a formal "finding of facts";
6. Have a section citing and/or explaining the law;
7. Apply the law to the facts in an "analysis" section;
8. Must state that a right to "appeal" exists according to La. R.S. 47:337.81B(1).

Taxpayer's Appeal Rights

- Taxpayers can request a redetermination hearing within 30 calendar days from the Notice of Disallowance La. R.S. 47:337.81A(1).
 - No requirement that the request must be in writing.
 - Collector “shall” render a decision within 30 days of the taxpayer’s request.
 - This requirement should be noted if parties cannot match schedules for a hearing.
 - Can this requirement be waived?
 - No requirement that hearing must be in-person.
 - Recommended that hearing be granted and scheduled in writing *and* that collector make/reiterate request for documents and information.
 - The request and holding of the hearing cannot extend the 90 days a taxpayer has from the “Notice of Disallowance” to appeal to the BTA. La. R.S. 47:337.81B.
- The redetermination hearing requires the collector to render a “decision” within 30 days of the request for a hearing.

Taxpayer's Appeal of Collector's Determination

- Within 90 days of the Collector's Notice of Disallowance, the taxpayer must appeal to the BTA.
 - A taxpayer cannot appeal to the district court in the Collector's parish.
- The appeal is *de novo* for all findings of facts and conclusions of law.
 - What if taxpayer produces documents in BTA which were requested but not first produced to Collector?
- The Collector is allowed to answer the taxpayer's appeal to assert a demand for "any taxes and additions thereto" that the Collector discovers.
- Discuss remaining miscellaneous issues and pitfalls regarding refund claim procedure.